THE HONOURABLE SRI JUSTICE G.BIKSHAPATHY
AND
THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO.807 OF 2004
&
WRIT APPEAL (SR) NO.54820 OF 2004

COMMON JUDGMENT: (per G.B.,J)

Since both the writ appeals, filed by the workman as well as the management, are directed against the order of the learned Single Judge in Writ Petition No.18350 of 1998, dated 14.2.2003, they are being disposed of by a common judgment.

2. The workman, Mr.N.Rama Chander Rao was appointed as Work Inspector on temporary basis on 7.6.1983. He worked up to 1.5.1984 and thereafter his services were disengaged. Therefore, he raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act. The Labour Court after considering the respective contentions held that the termination was not sustainable and accordingly passed the award directing reinstatement of the petitioner without back wages and without continuity of service. Consequent of the award of the Tribunal, the management has reinstated the petitioner into service on 6.3.1997. However, the management challenged the award of the Tribunal in Writ Petition No.25411 of 1996. The learned Single Judge, after hearing the parties, dismissed the writ petition observing as follows:

> " The labour Court had considered the evidence of witnesses examined on either side and found that R-1 had been working for 11 months continuously and therefore, he was entitled to the protection of the provisions under the I.D.Act. It is found that R-1 was ousted by the petitioner

through a telegram issued to the office of the Mandal Development Housing Corporation, Warangal. It is true that R-1 represented to the office through an application only on 8.7.1992. But in view of the fact that R-1 had not committed any irregularity while he was in service and also in the absence of any proof of unauthorized absence on the part of R-1, it cannot be said that the award passed reinstating the Ist respondent is illegal. The Ist respondent is entitled, being an ex-employee for the protection of Section 25-F of the Industrial Disputes Act. In view of the fact that the Ist respondent was only reinstated into service without any back wages and without any continuity of service there is no ground for interference by this Court. The Writ Petition is therefore, dismissed. No costs."

3. However, the grievance of the employee/workman was that even though he was reinstated, he was being paid only Rs.500/- whereas he is entitled with regular scale of pay, therefore, he filed Writ Petition No.18350 of 1998 for regular scale of pay right from the date of reinstatement. But, however during the course of the pendency of the writ petition, he sought for an amendment challenging the award of the Tribunal in I.D.No.172 of 1992, dated 26.4.1996 to the extent of denying the past service and also denying the back wages. The learned Single Judge by an order dated 14.2.2003 allowed the writ petition and directed the respondents to pay the minimum wages from the date of the award, i.e., 26.4.1996 till 31.12.2002 and further directed the authorities to regularize the services of the petitioner on par with the similarly placed persons, treating the period out of service as continuity in service and put him on the regular pay scale with effect from 1.1.2003. Aggrieved by the said order, management filed Writ Appeal to the extent of directing payment of wages and regularization of service. Aggrieved by the said order, the workman also filed Writ Appeal to the extent that he was denied back wages.

4. The learned counsel for the State Housing Corporation submits that the order passed by the learned Single Judge is erroneous and contrary to law. He further submits that when the award of the Tribunal was challenged in the Writ Petition No.25411 of 1996, dated 27.1.1997, the learned Single Judge refused to interfere with the award of the Tribunal on the ground that when the Labour Court has granted only reinstatement into service, without continuity of service and without back wages, but the said order of the learned single Judge was not challenged by the employee in any Writ Appeal. Subsequently the employee filed writ petition seeking regularization of service and regular scale of pay. Incidentally it appears, he also sought for amendment making challenge to the award of the Tribunal. It is to be noted in this regard that when the writ petition filed by the department itself was dismissed confirming the award, denying the back wages and denying continuity of service, it is not open for the workman to again agitate the same in a subsequent writ petition in effect. If he was aggrieved by the order of the learned Single Judge, he could have carried the matter in writ appeal, but he did not do so. What he could not do directly, cannot be allowed to be done indirectly in the subsequent stages. This aspect was not considered by the learned Single Judge. The learned Single Judge proceeded on footing that when the termination was in violation of Section 25-A of the Industrial Disputes Act, he is entitled for all benefits including regularization, which goes beyond the scope of the industrial dispute.

5. We accordingly set aside the order of the learned Single Judge and allow the appeal filed by the management in Writ Appeal No.807 of 2004.

However, we observe that if any work Inspectors were appointed subsequent to the date of appoint of the workman, i.e.,

7.6.1983, he is also entitled for similar benefits as were given to such persons, who are appointed subsequently. With this direction the Writ Appeal (SR) No.54820 of 2004 is disposed of. No costs.

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G.BIKSHAPATHY,J

DT.23.6.2004.

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B.SESHASAYANA REDDY, J

Mdaa.